

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA

IN RE: . Case No. 08-35653(KRH)
CIRCUIT CITY STORES, INC., .
Debtor. . 701 East Broad Street
Richmond, VA 23219
May 13, 2009
2:35 p.m.

TRANSCRIPT OF HEARING
BEFORE HONORABLE KEVIN R. HUENNEKENS
UNITED STATES BANKRUPTCY COURT JUDGE

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I N D E X

<u>EXHIBIT</u>		<u>ID</u>	<u>EVID</u>
D-1	Auction Transcript	5	--
D-2	Auction Transcript	35	--
D-3	Landlord Auction Transcript	38	--

1 THE CLERK: Court is now in session. Please be
2 seated. In the matter of Circuit City Stores Inc. hearing on
3 items one through 25 as set out on debtor's agenda.

4 MR. FOLEY: Good afternoon, Your Honor. Doug Foley
5 of McGuire Woods on behalf of the debtors. With me at counsel
6 table is Greg Galardi from Skadden Arps and Ian Fredericks from
7 Skadden Arps. Today in the courtroom as well from Circuit City
8 is Mr. Jim Markum, the CEO, and Michele Mozier who is CFO who
9 has been here in Court before. Your Honor, we also have
10 various other professionals that have been working on
11 particular one transaction that is on the agenda today, which
12 is item number 24. So if it pleases the Court, given the
13 collective cost to the estate of not taking that one first, we
14 would ask the Court if the Court would agree to hear matter 24
15 first so that we can proceed to clear out the courtroom for all
16 the professionals that don't need to stay for the rest of the
17 agenda.

18 THE COURT: By all means that would be my preference.

19 MR. FOLEY: Thank you, Your Honor.

20 MR. GALARDI: In an effort to put us on travel time,
21 Your Honor, I think I will be rather brief.

22 Your Honor, number 24, Your Honor has approved a bid
23 procedures motion for the intellectual property. The stalking
24 horse in that transaction was Sytemax. I am pleased to say
25 that with respect to the transaction we received no objections.

1 That is not to mean that we haven't worked hard and Ms. Cordry
2 is in the courtroom today on behalf of the National Association
3 of Attorneys Generals that we have spent a lot of time with and
4 in particular Systemax has spent a lot time with.

5 Your Honor, just very briefly, I also have two other
6 gentlemen in the courtroom today in addition to Mr. Markum. If
7 Your Honor had questions about the process that we went through
8 or the outcome of the auction, Mr. Nicholas Barnes of
9 Rothschild who has been involved as an investment banker is in
10 the courtroom today seated in the row right behind the counsel
11 table, as well as Mr. Gabe Fried of Stream Bank who is in the
12 last row. Both gentlemen have worked in the IP realm and on
13 this particular sale throughout the process and just highlight
14 and probably contacted over 100 potential interested parties,
15 30 of whom sent confidentiality agreements and ultimately in
16 addition to Systemax there were three bidders at the auction,
17 two of whom we qualified, one of whom we did not qualify.

18 Your Honor, as a record of that auction, what I'd
19 like to do is have -- I've had marked, pre-marked, debtor's
20 exhibit 1 which is the transcript from that auction and hand it
21 up to Your Honor.

22 THE COURT: You may. Hand it to the court security
23 officer.

24 MR. GALARDI: Your Honor, just very briefly since
25 there are no objections, what I've handed you up is a

1 transcript and two exhibits that recount the auction that we
2 conducted. As I mentioned, pursuant to your bid procedures
3 order, we provided notice in accordance with the bid procedure
4 order and also engaged in a number of conversations with both
5 the U.S. Trustee's Office involved and a number of attorney
6 generals and the stalking horse at that time, Systemax, with
7 respect to the procedures.

8 In addition, as Your Honor knows, Ms. Lucy Thompson
9 served as the ombudsman, filed a report in this case and then
10 subsequently I understand has filed an amended report. The two
11 exhibits to the transcript, to go through the process that we
12 went through, there are two exhibits to the transcript. They
13 are the last -- well the last page is an addition to the sale
14 order which may have been modified and in addition Ms.
15 Thompson's interim report.

16 We went through the process of negotiating with the
17 potential bidders. There were three bids submitted in addition
18 to the Systemax's bid. One was from PC Connection, one was
19 from PC Mall and one was from Ultimate Electronics Acquisition
20 Company. They were, for a combination of cash and/or an earn
21 out, very much like the structure of the Systemax deal except
22 with the exception of the Ultimate Electronics proposal which
23 really didn't contemplate an earn out structure.

24 The debtors and their professionals and the committee
25 and their professionals negotiated with the parties prior to

1 the auction to obtain what we call the highest and otherwise
2 best bid which was, again, a combination of cash and an earn
3 out. But we looked at essentially four dimensions going into
4 the auction. First was the cash component as you may recall.
5 Systemax started with a 6.5 cash bid and an earn out which the
6 debtors had a valuation on but we wanted to try to monetize
7 that. So we asked for a guarantee.

8 We also asked for, and it was very important in this
9 whole process and you'll hear a little bit about this as other
10 counsel gets up, as Your Honor recalls we have done in the
11 Canadian transaction, the Canadian sale, and part of the IP
12 related to Canada which is the source by Circuit City and the
13 Canadian website.

14 In addition, Your Honor, we will soon be filing a
15 motion to approve a settlement with one of our warranty
16 providers that was concerned about IP and data information with
17 respect to that. That is Assurant and there may be another
18 one, the Warranty Group. So as we approach this auction we
19 wanted to make sure that we reserved our rights on those two
20 transactions which are very substantial transactions and
21 substantial benefit to the estate. So we were concerned that
22 the bidder and including Sytemax who had already worked through
23 most of those issues would continue to be able to allow us to
24 consummate those transactions.

25 In addition, we wanted the minimum number of

1 objections and that was to be dealt with by way of one Ms.
2 Thompson's report on the interim and also to deal with the
3 attorney general so we spent a number of times on the phone
4 calls.

5 Prior to the beginning of the auction we received
6 cash bids from PC Mall and PC Connection in the \$7 million
7 range and \$6.9 million range. And, in addition, they had
8 agreed to guarantee in cash their earn out. As a result of
9 those two bids, we deemed that we had received a higher or
10 otherwise better bid from a competitive bidder which would
11 allow us to commence the auction.

12 Although Mr. Waddle's group, the Ultimate
13 Acquisition, also provided cash, we determined that that cash
14 bid was lower than or not a qualifying bid and advised Mr.
15 Waddles of that affect. He left that bid on the table and said
16 if anybody wanted to team up, he would be available and left
17 the auction and so we proceeded with the auction with
18 essentially three bidders as the transcript would provide.

19 Commencing that auction critically all of the bidders
20 agree to the warranty language which is exhibit 2 to this
21 transcript, the very last page which is in the sale order which
22 essentially allows us to go forward with the Assurant and other
23 warranty deals. It's a one page exhibit, the very last
24 language that we typed out. All of the bidders agreed to that
25 language. And, importantly, all of the bidders agreed with one

1 minor exception which I think now has been addressed to abide
2 by the recommendations of the ombudsman appointed in Ms.
3 Thompson's report.

4 So with those two agreements on the record we then
5 proceeded with cash bids, with cash and guarantee, there being
6 really very little economic difference or differences in the
7 contracts. I mean everybody had their little tweak on an
8 agreement, but the material terms were really who was going to
9 bid the cash and whether they were going to backstop the earn
10 out with a guarantee.

11 We began, obviously, the first stalking horse bid was
12 6.5 from Sytemax and there was an earn out with no guarantee.
13 At the conclusion of the auction, Systemax was deemed to be the
14 highest and otherwise best bidder. There was many rounds. We
15 did in fact modify the procedures to go up in 100,000
16 increments with the right to go lower increments even though we
17 started with 25 in the sale procedures order. All the parties
18 agreed that it was, given the lateness in time we started,
19 probably I think it was nine or ten o'clock at night and we
20 went through midnight, it was better to start with 100,000
21 increments until such time as we thought we could be back to go
22 down to the 25,000 or 50,000 increments.

23 We started with the bid at 6.5 and no guarantee on
24 the earn out. I'm pleased to say at the end of the auction we
25 were at \$14 million cash, a \$3 million earn out, which earn out

1 is guaranteed by an LC, it's backstopped by an LC. And the way
2 that the earn out works, Your Honor, is that it is a three
3 million earn out that is payable in 30 months. So if the
4 company does better than the earn out, it really is what I will
5 call a top up provision. If we earn out and make five million,
6 six million dollars, that's to the benefit of the estate. But
7 in no event within 30 months will the estate make less than the
8 earn out of \$3 million. So that there is no collection risks,
9 Sytemax has agreed to backstop that with an LC for \$3 million.

10 Your Honor, so the auction was very successful.
11 Again with respect to findings in the order as to good faith,
12 no collusive bidding and those sorts of things I think were two
13 things. One, Your Honor has heard and approved in the stalking
14 horse bid that that was the result of arms length negotiations.
15 Two, Your Honor, we went and had a very successful auction back
16 and forth. With respect to the parties there was negotiations
17 over the contract. There was one contract provision which we
18 had negotiations with.

19 In addition, Systemax, in particular, because they
20 are the successful bidder, has worked very lengthy hours to
21 accommodate both the state attorney generals as well as Ms.
22 Thompson and the ombudsman, of course, such that I'm pleased to
23 say we have no objections today. So with respect to the
24 findings of good faith fair value, we think both the auction as
25 well as the negotiations, as well as the negotiations that took

1 place both with U.S. Trustee on the line and outside of the
2 U.S. Trustee with the state's attorney generals on privacy
3 policies and the recommendations, I think they are entitled and
4 Mr. Markum, Mr. Fried or Mr. Barnes could all testify that this
5 is the result of arms length negotiations that we believe the
6 market has, in fact, given us the highest or otherwise best
7 price.

8 And we would request Your Honor to approve the sale
9 and the sale order. Your Honor, what I think we would propose
10 to do if Your Honor is so inclined to approve the sale, and
11 other people may want to speak on this matter, if Your Honor is
12 inclined to approve this sale there is a detail with respect to
13 the Canadian, interaction between the Canadian transaction and
14 this transaction. There is a reference to the sale order with
15 respect to a side agreement between those parties to work out
16 the source by Circuit City.

17 I think there was a detail that is still being worked
18 out between the two parties based on Canadian common law as I
19 understand the issue. So, I don't think we will submit the
20 order today for Your Honor's signature but that we will be
21 submitting it once those issues are in fact resolved along with
22 the two attached side letters so that everyone can have the
23 information. We thought that that would be appropriate and the
24 two buyers are -- the Canadian buyer accepts that and the
25 buyer, Systemax, accepts that.

1 Your Honor, again, also just so the record is clear,
2 throughout the process the committee has been involved in this
3 process. In fact, committee counsel -- I don't know if Mr.
4 Feinstein is on the phone, as well as their financial advisor,
5 Protivity, was at the auction. They did participate in the
6 discussion strategies and working on all of these issues. We
7 did, in fact, have their support for this transaction.

8 So I'd like to say it went seamlessly and there are
9 no objections and ask Your Honor to approve it subject to
10 comments from other people or questions that Your Honor may
11 have. Mr. Barnes, Mr. Markum and Mr. Fried are here if you
12 wanted to have a record with respect to the findings, but each
13 would verify to the extent of their knowledge the findings and
14 everyone -- all of those findings, would be covered by one of
15 those witnesses.

16 THE COURT: All right. Very good. Thank you, Mr.
17 Galardi. Does any party wish to be heard in connection with
18 the debtor's motion?

19 MR. LESHAW: Good afternoon, Your Honor. Jim Leshaw
20 from Greenberg Traurig's Miami office. I represent 445 --
21 sorry, 4458729 Canada Inc. and Bell Canada, the purchaser of
22 the Canadian assets. I am joined by Virginia Robinson who is
23 admitted to practice before this Court.

24 I just want to expand a bit on what Mr. Galardi said
25 because there is one thing that Your Honor is going to be asked

1 to approve in connection with the Sytemax sale order that is
2 important to Bell Canada, and that is I believe Your Honor was
3 sent a copy of a Bell Canada Circuit City side letter earlier
4 today. There is -- it's possible that there is going to be an
5 amendment to that order, but the --sorry, to that side letter,
6 but the gist of it is, is that the side letter will provide
7 either that common law rights, Canadian common law rights to
8 the name, the source by Circuit City, will either be conveyed
9 to the Canadian purchaser or will be conveyed to Systemax and
10 then licensed back to the Canadian purchaser.

11 And if the common law rights are conveyed to
12 Systemax, in addition to that Systemax will have to agree that
13 they won't use the common law rights after the Bell license
14 terminates and some other related matters. We just wanted to
15 make that clear to Your Honor.

16 THE COURT: All right. Thank you.

17 MR. LESHAW: Thank you.

18 THE COURT: Does any other party wish to be heard?

19 MS. FREJKA: Good afternoon, Your Honor. My name is
20 Elise Frejka from Kramer, Levin, Neptiles and Franco. I
21 represent Systemax. You signed an order allowing me pro hac
22 vice yesterday.

23 I just wanted to make a statement on the record that
24 Systemax is the highest and best bidder and we have entered
25 into very extensive negotiations with the attorneys general as

1 well as the ombudsman regarding the procedures that we're going
2 to follow in connection with notifying consumers in this
3 proceeding.

4 Systemax has voluntarily entered into these. We do
5 not feel that there is a precedent necessarily requiring us to
6 do this. But we felt that to complete this sale it was in the
7 best interest of all parties to provide notice to consumers and
8 there is an extensive opt out process that will be in the order
9 that you receive.

10 I do have Richard Wallach from Systemax here today
11 who could testify to the purchaser's ability to comply with
12 these opt out provisions if there is any question by any of the
13 parties that are here.

14 THE COURT: All right. Thank you very much.

15 MS. FREJKA: Thank you.

16 THE COURT: Does any other party wish to be heard?

17 MS. TAVENNER: Good afternoon, Your Honor. Lynn
18 Tavenner from the law firm of Tavenner & Beran appearing on
19 behalf of the official committee of unsecured creditors. I do
20 believe Mr. Feinstein is also appearing by telephone as well,
21 Your Honor. He was on standby.

22 MR. FEINSTEIN: Yes, I'm on.

23 MS. TAVENNER: I did want to confirm that what Mr.
24 Galardi said is indeed correct. The committee has been
25 participating and actively involved throughout this process and

1 does stand before Your Honor today supporting the sale.

2 THE COURT: All right. Thank you, Ms. Tavenner.

3 Does any other party wish to be heard?

4 MS. CORDRY: Hi, my name is Karen Cordry. I'm the
5 bankruptcy counsel at the National Association of Attorneys
6 General. And I am here to speak to you just about the position
7 that the state attorney general did take in this matter.

8 It was a matter of great interest to them. We've had
9 as many as 35 or 40 states on some of the calls and we've had
10 quite a number of calls with the debtor, the buyer, the
11 consumer privacy ombudsman, U.S. Trustee and the creditor's
12 committee at different times, and we would like to first say we
13 appreciate all that hard work, everyone's attention to the
14 concerns we raised. We wanted to thank the debtor for serving
15 this motion and proposed order on the states in a timely
16 fashion. That is something that I am coming to find out does
17 not always happen in some of these kinds of cases. So we feel
18 like maybe we're coming a little late to this party, but it's
19 one we've been involved in since 2000 with the Toy Smart case
20 which I think you've seen reference to in the consumer privacy
21 ombudsman's report.

22 That one was a matter, of course, of great concern.
23 It's probably the real poster child for the problems in this
24 area where you had children's data and credit card data and
25 everything being sold. The states took the position in that

1 case that selling that sort of data in violation of a privacy
2 policy would violate their state Unfair and Deceptive Acts and
3 Practices laws and that it couldn't be resolved simply by
4 having the notion of a qualified buyer. It was a matter for
5 the consumers to choose.

6 And that's the position the states have continued to
7 take. We worked with Senator Leahey and had the language put
8 into the bankruptcy act to make sure that it explicitly did not
9 preempt state law in those regards. So when this case came up,
10 we again were somewhat concerned that the original proposal did
11 seem to go back to this notion of, well, if we just have a
12 qualified buyer we don't need to go back to the consumers and
13 there was no direct notice to consumers. I mean there was
14 publication notice, but nothing was sent directly to consumers
15 about this.

16 So that was when we made contact with both the debtor
17 and then we eventually talked to the consumer privacy ombudsman
18 and we did work through these things and I think the order that
19 now is in place does have, as parties have said, extensive opt
20 out provisions. All of the consumers that are subject to the
21 specific privacy policy will get notice and a chance to opt
22 out. There was also added persons who did not come in through
23 the website and who may or may not have any sort of legal
24 privacy obligations there. But to the extent that there are
25 email addresses, the buyer has again agreed to do that and,

1 again, we deeply appreciate those kind of rights also being
2 given to consumers.

3 And, again, because the debtor has had issues with,
4 at this point, really having the capacity to do the opt out
5 itself, we raised the view that we thought it should go through
6 a third party so that the information didn't actually transfer
7 to the buyer til the opt out process had been done. And,
8 again, the buyer agreed to do that. And, again, the states
9 talked about that and said that appeared to us to meet the
10 bases of the privacy policy that didn't have the transfer to an
11 entity for marketing purposes until the opt out had taken
12 place.

13 So, the net result of all of that is after a great
14 many conversations and a lot of late night work by a number of
15 people. I think the order that is there is something that the
16 states have agreed is acceptable to them. There were informal
17 objections in the sense of, you know, verbal discussions and
18 everything. We never filed formal objections because as of
19 yesterday when the deadline came we did have these provisions
20 in place and they were acceptable to the states. So they did
21 not feel a need to file objections and I think they do believe
22 that what is there does not violate their laws and that is one
23 of the criteria that you need to find in your order and the
24 order now so states that.

25 So, we appreciate the result of this. We do think

1 that one of the reasons why this was -- that these sets of
2 provisions are appropriate is because this did not have the
3 most sensitive kinds of financial data being transferred.
4 Things like credit card numbers, social security numbers,
5 drivers licenses, those are subject in many states to a
6 different set of law, they're data breach laws. But because
7 that kind of information is not being transferred, again, we
8 were able to verify that through these discussions, there is no
9 need for the states then to object to the transfer here.

10 So, other sales may raise other issues but for this
11 sale, this process, we are happy with the outcome and we
12 congratulate the parties on a successful transaction and a bid
13 process that seemed to have worked very well for them. Thank
14 you, Your Honor.

15 THE COURT: Thank you very much. Any other party
16 wish to be heard? Yes, ma'am.

17 MS. THOMSON: Good afternoon, Your Honor. My name is
18 Lucy Thomson. I was appointed consumer privacy ombudsman by
19 the U.S. Trustee upon your order and I just wanted to highlight
20 a few things in the two reports that I filed.

21 I've been working steadily with the debtors, the
22 buyers, Systemax, and we've involved the state attorneys
23 general and Ms. Cordry. And the U.S. Trustee has been involved
24 as you have heard. For the last two weeks, I filed an interim
25 report on Monday which reflected the fact that the auction was

1 about to take place and four bidders were going to be
2 considered. Then the report that I signed -- I submitted today
3 focused on the final agreement that we have all reached for
4 Your Honor's consideration with Systemax as the buyer.

5 As you can see from the report the bankruptcy code
6 lays out the analytical framework that Your Honor considers in
7 these kinds of cases and that is set out on page 13. There is
8 several different steps to the process in the bankruptcy code.
9 The first being a consideration of the privacy policy and
10 whether it's been violated. Then even if the privacy policy
11 has been violated, Your Honor can find that the sale can be
12 approved if the sale is consistent with the policy or a
13 consumer privacy ombudsman is appointed and after a hearing and
14 notice Your Honor finds that the facts and circumstances of the
15 sale would protect the privacy of the consumers, and there was
16 no showing that there was any violation of non-bankruptcy law.

17 With respect -- there is two categories of data.
18 The first one is the Alpine data. The Alpine is referred to as
19 -- it's a server that Circuit City has. There are 33 million
20 individuals involved in that group of data. Those people
21 bought products from the Circuit City stores and did not have
22 any transactions on line. So the privacy policy doesn't apply
23 to those people. So there is no violation of the privacy
24 policy obviously because it doesn't apply.

25 So with respect to those 33 million, I think Your

1 Honor could find that there is no problem with them. But I was
2 able to negotiate with the parties and reach agreement that
3 Systemax has agreed to apply the privacy policy to those 33
4 million individuals. And in my opinion that is a huge step
5 that this buyer is willing to do because that gives people who
6 had no privacy protections before, the full privacy protections
7 of the Circuit City privacy policy.

8 I also went through the specific data items in the
9 data bases and worked very hard to make sure that the data to
10 be sold was limited so that the kinds of records that subject
11 people to identity theft or fraud are not included in this
12 sale. So some of the information is actually found in public
13 phone books and there is email addresses there, but it's not
14 the most sensitive data that you could possibly have.

15 So with respect to those 33 million consumers in the
16 Alpine data we've had a huge step forward in terms of privacy
17 protection for those people. Then the second group of
18 consumers are in the Circuit City data. There is 14 million
19 individuals in that group. The privacy policy does apply to
20 those people.

21 I analyzed in my report the privacy policy and I set
22 forth all of the aspects of it that are important for Your
23 Honor to consider. There is one operative sentence there about
24 how information will not not be transferred to a third party
25 for marketing purposes and there is differences of opinion

1 about what that particular phrase means.

2 But Your Honor could find that the privacy policy is
3 violated or you could find that it's not violated. In my
4 opinion, a reasonable interpretation of that particular phrase
5 would be that you wouldn't have concurrent sales of the data,
6 you wouldn't have Circuit City using the data to market and
7 then sell it to Macy's or a telemarketing firm for "marketing"
8 purposes.

9 But on the other hand you could also take a more
10 strict view. But regardless of what Your Honor finds with
11 respect to the privacy policy, it's my recommendation that the
12 sale can still go through because we've -- I proposed a very
13 strict and supervised opt out process which provides notice for
14 the consumers and after much consideration and discussion, it
15 was agreed that the opt out process would be conducted before
16 the data is transferred to Systemax which means that the
17 consumers are protected 100 percent because their data is not
18 transferred until they are given an opportunity to opt out and
19 therefore they can decide and give consent to whether they want
20 their data to be used for -- in the E-commerce business that
21 Systemax is going to be pursuing under the "new" Circuit City.

22 As far as whether any non-bankruptcy laws have been
23 violated, I went through in quite a bit of detail each one of
24 the laws that would apply including the Federal Trade
25 Commission Act and there's analogous state laws there and there

1 is quite a bit of law in the area of what's an unfair or
2 deceptive business practice, and there's fairly strict
3 standards and you have to show harm and you have to show that
4 the consumers could have actually taken steps to avoid the
5 harm. And in this agreement, Systemax has agreed to post a
6 clear and conspicuous notice on the website telling everybody
7 that this sale is taking place. So there is notice that will
8 be given right after the sale is finished.

9 There's five ways that consumers can opt out of the
10 use of their data. So in my opinion the consumers are
11 protected and there is no violations of the non-bankruptcy
12 laws. So, in summary, the data to be transferred is very
13 limited. The opt out process we all believe for Your Honor's
14 consideration is transparent and effective and will be very
15 robust. It will be supervised for the next two or three weeks
16 and no non-bankruptcy law has been violated.

17 So those are my recommendations and I appreciate
18 having served in this position and I am happy to answer any
19 questions.

20 THE COURT: Thank you very much, Ms. Thomson. The
21 Court very much appreciates your report and the hard work that
22 you've done in making the sale happen.

23 MS. THOMSON: Thank you.

24 THE COURT: Does any other party wish to be heard?

25 MS. PECORARO: Good afternoon, Your Honor. Shannon

1 Pecoraro for the U.S. Trustee's Office. I just wanted to state
2 for the record that we have reviewed the report of the
3 ombudsman. We are also very aware of the extra measures that
4 have been taken by Systemax and we do not have any objection to
5 the sale.

6 THE COURT: Thank you very much. Does any other
7 party wish to be heard?

8 All right, Mr. Galardi, I -- the Court commends you
9 on conducting a very successful sale. The Court will approve
10 the sale and grant the motion. I am pleased that you've gotten
11 such a diverse interest all aligned in this process. That
12 obviously demonstrates a very good working arrangement on your
13 part with all of the interested parties. And the Court will
14 grant the motion.

15 MR. GALARDI: Thank you, Your Honor. We'll ask the
16 matter be excused, Your Honor, but I'd also -- it was Mr.
17 Fredericks who did most of the work. Thank you.

18 THE COURT: Well, of course, that went without
19 saying.

20 MR. GALARDI: Thought I would at least say it on the
21 record.

22 THE COURT: Very good.

23 MR. GALARDI: Since I've given him a lot of abuse
24 this morning. Thank you, Your Honor.

25 THE COURT: All right. And everybody that needs to

1 catch a flight, you may be excused.

2 MR. FOLEY: Good afternoon, Your Honor. Doug Foley
3 on behalf of the debtors. With respect to the balance of the
4 agenda, Your Honor, just to go through the items, item number
5 one is the motion by Google for payment of administrative
6 claim. We were able to resolve and reconcile the amounts with
7 them and they've advised us to report to the Court that they
8 are withdrawing that motion.

9 THE COURT: All right. Very good.

10 MR. FOLEY: Your Honor, item number two is the matter
11 that was leftover to be resolved with respect to TomTom. But
12 as Your Honor is aware from our last hearing we were able to
13 completely resolve things with them so we did not have to tee
14 up the issue with respect to 502(d). That motion has been
15 filed recently and it is set for a hearing on the May 28th
16 omnibus hearing date. So although this motion of theirs is
17 resolved by that when that resolution gets approved, if -- I
18 know the agenda says that we wanted to take it off -- if we
19 could actually carry item number two over to the May 28th
20 docket as well so it can be heard the same time as the global
21 approval that makes more sense.

22 THE COURT: You may.

23 MR. FOLEY: Thank you, Your Honor.

24 THE COURT: So that will be continued to May 28th.

25 MR. FOLEY: Your Honor, item number three again is

1 our motion with respect to setting sell down procedures and
2 trading equity and claims. Again, we are still evaluating
3 whether or not the NOL has value here and with the committee,
4 and so we'd ask the Court to again adjourn that one til the May
5 28th hearing date.

6 THE COURT: It will be adjourned to May 28.

7 MR. FOLEY: Your Honor, similarly item number four,
8 this is our 9019 motion with respect to resolving all of our
9 issues with IBM. As a result of some of the transactions --
10 the transaction that Your Honor just approved today and some
11 other issues that are still pending with them, we need a little
12 bit more time before we actually ask the Court to bless that
13 settlement. Sure, go ahead.

14 MR. FREDERICKS: Good morning, Your Honor. Ian
15 Fredericks. It's probably just easier if I give you a little
16 bit more of an update on that. Given that the sale has been
17 approved to Systemax, once that one closes there will be no
18 need to go forward with this settlement with IBM. And, in
19 fact, I believe we filed a stipulation with the Court last week
20 resolving some other issues with IBM. One of them was that if
21 we don't go forward with this settlement at the May 28th
22 hearing, the motion will be automatically be deemed withdrawn
23 and the settlement will be off the table.

24 Given where we are with Systemax, that will occur by
25 the May 28th hearing. So I just wanted to -- this should come

1 off the agenda next time.

2 THE COURT: All right. Very good.

3 MR. FREDERICKS: Thank you, Your Honor.

4 THE COURT: Thank you.

5 MR. FOLEY: Your Honor, item number five, this is the
6 motion by Federal Warranty and Assurant. There was some
7 reference -- there is a reference in the order that Your Honor
8 is going to approve with respect to the Systemax sale that
9 deals with some of the issues with Federal Warranty and
10 Assurant. But we are working on documenting a global
11 transaction with them that will result in substantial sums
12 coming to the estate. We hope to have that teed up in time to
13 be approved on the May 28th hearing date but in the meantime
14 they've consented to adjourn their matter until the May 28th
15 hearing date.

16 THE COURT: All right. So that will be adjourned to
17 May 28.

18 MR. FOLEY: Your Honor, item number six, this is the
19 DirectTV motion for relief from stay that set off and recoup.
20 Again, we are evaluating a proposal we recently received from
21 them so they have agreed to continue their hearing on this
22 motion until May 28th.

23 THE COURT: That will be continued to May 28.

24 MR. FOLEY: Your Honor, similarly, the motion by Sony
25 on number seven, we are also evaluating a proposal we recently

1 received from them as well, and they've asked that their motion
2 be adjourned til the June 9th hearing date.

3 THE COURT: All right. So that will be adjourned to
4 June 9.

5 MR. FOLEY: Your Honor, the Shannon Heiser (phonetic)
6 Electric Corporation motion for filing a late proof of claim
7 under 503b(9), they have agreed again based upon our
8 presentation to the Court at the last hearing about not having
9 to incur costs relating to these types of motions until we have
10 to, they have agreed to adjourn their motion until the May 28th
11 hearing day.

12 THE COURT: All right. That will be adjourned to May
13 28.

14 MR. FOLEY: Your Honor, items number nine which is
15 South Peak Interactive LLC, motion for administrative claim, as
16 well as items number ten CC Kingsport 98 LLC, item number 11
17 which is Cardinal Capital Partners, item number 12 which is
18 Circuit Investors Number Two LTD, number 13 which is Bradywine
19 Grand C LP have all either 365(d)(3) motions or motions for
20 administrative claims under 503(b) and we're in the process of
21 reconciling various invoices with all of these parties, most of
22 which are landlords. And they have all agreed to adjourn their
23 motions til the May 28 hearing date to give us more time to
24 complete those reconciliations.

25 THE COURT: All right. So items nine, ten, 11, 12,

1 13 will be adjourned to May 28.

2 MR. FOLEY: Thank you, Your Honor. Item number 14,
3 similar to number eight, this is the Veridus (phonetic) motion
4 for filing a late proof of claim. They also have agreed not to
5 incur costs associated with this motion for the time being
6 until we know we have to do it. They ask that their matter be
7 adjourned until the May 28 hearing date.

8 THE COURT: That will be adjourned to May 28.

9 MR. FOLEY: Similarly, Your Honor, Ocala County
10 Taxing Authority, a similar motion for administrative claim.
11 We are in the process of reconciling issues with them and
12 they've agreed to adjourn their motion til the May 28th hearing
13 date.

14 THE COURT: All right. Item number 15 will be
15 adjourned to May 28.

16 MR. FOLEY: Your Honor, items number 16, 17 and 18
17 Polaris Advance Real Estate Management LLC, St. Cloud
18 Associates, these are all landlords that have some claims that
19 are leftover relating to attorneys' fees and some other issues
20 of the reconciliation. They've all agreed and requested that
21 their motions be adjourned until the June 23rd hearing date.

22 THE COURT: All right. So those matters will be
23 adjourned to June 23.

24 MR. FOLEY: Your Honor, the matter number 19 is a
25 procedural motion seeking approval to shorten the time period

1 for notice with respect to an auction sale of real estate. The
2 distribution center in Ardmore, Oklahoma which we also
3 conducted on Monday with the other auctions. Mr. Fredericks
4 will be addressing the actual motion itself which is item
5 number 20. But unless -- we have not received any objections
6 to the motion to shorten notice period, we would ask the Court
7 to approve that.

8 THE COURT: That will be approved.

9 MR. FOLEY: Your Honor, I'll skip over number 20 for
10 a minute. Mr. Fredericks will be addressing the Court on
11 number 20 as well as item matter number 25 which is the Sam
12 Atail (phonetic) lease.

13 Your Honor, item number 21 is our request for the
14 Court to enter an order to approve a bar date procedure for
15 filing administrative claims in the case. As Your Honor is
16 aware, you already approved a 503b(9) bar date, December 19th.
17 We are not seeking to extend or revise or open that up again.
18 This is really just to set an administrative claim bar date for
19 the case, the collar around which we are asking the Court to
20 set is the petition date through April 30th. So any claims
21 that would have arisen that people think they have
22 administrative expense for, they would be required to file
23 their administrative expense request with the claims noticing
24 agent. And we're asking the Court to set that deadline to be
25 June 30th.

1 And the order also approves procedures, Your Honor,
2 to govern how we would object and resolve those types of
3 claims. But as Your Honor is aware, this will allow us to get
4 a handle on sort of the complete picture of what the potential
5 administrative claim exposure is in the case. There are some
6 exclusions from, obviously, exclusions from the requirement
7 here to file administrative expense claims by that date and
8 those would be parties who have obviously already filed one in
9 any format, parties who have already had administrative claims
10 allowed, intercompany administrative claims and professionals
11 which were governed by their own compensation monthly
12 procedures. So we sort of got a handle on -- we know what
13 those are.

14 So other than that, Your Honor, we have not received
15 any objections. The motion was broadly served on all parties
16 in interest and we would ask the Court to approve the
17 procedure.

18 THE COURT: And what kind of notice will the
19 administrative claims be receiving of the bar date?

20 MR. FOLEY: Your Honor, we will -- although the form
21 of the order when we filed it, we were expecting to file this
22 motion sooner, says that we will send out the notice to all
23 known and reasonably ascertainable creditors, holders of
24 administrative expenses by May 15th. What we believe we can do
25 in talking with the claims agent is have, if Your Honor enters

1 an order today for example on this particular motion, we could
2 have the notices sent out within five business days of when
3 Your Honor enters the order so they would have 45 days notice
4 of the bar date. Again, to cover the period from -- that ends
5 on April 30th. So any claims that arose during that window,
6 petition date to April 30th, they would get notice by next
7 Wednesday that the form of which is attached to the order and
8 they would have until the end of June to file their
9 administrative expense requests.

10 THE COURT: All right. Very good.

11 MR. FOLEY: And we would also obviously publish it by
12 the same date, Your Honor, in the Richmond Times Dispatch and
13 the Wall Street Journal and the Financial Times, as well.

14 THE COURT: Does any party wish to be heard with the
15 debtor's motion to establish a bar date? All right. That
16 motion will be granted.

17 MR. FOLEY: Thank you, Your Honor. Mr. Blanks will
18 address the Court on items number 22 and 23 which are initial
19 omnibus claim objections to the 503b(9) claims.

20 MR. BLANKS: Good morning, Your Honor. Daniel Blanks
21 on behalf of the debtors. The next two items on the agenda are
22 the debtor's second and third omnibus objections to the late
23 503(b)(9) claims. As Your Honor is aware on November 12, 2008
24 Your Honor entered an order that established December 19th,
25 2008 as the deadline and bar date for all parties in interest

1 to file any and all 503(b)(9) claims.

2 In the debtor's second and third omnibus objection
3 all of those claims that are listed in there were all filed
4 after that date. To the second omnibus objection, four parties
5 filed a formal response with the Court. In addition to that,
6 we received two other requests from two parties. Those two
7 parties are AMC and First Energy, both of whom requested that
8 their 503(b)(9) claims be reclassified as general unsecured
9 claims, and the debtors have consented to that
10 reclassification.

11 In addition, Your Honor, one party in interest filed
12 a formal objection to our third omnibus objection. Your Honor,
13 at this time we would ask the Court to adjourn those hearings
14 for which we had the five responses to the June 23rd omnibus
15 hearing. Also to reclassify the two claimants' claims that
16 requested such reclassification and for the Court to disallow
17 in their entirety all of the other remaining claims that are
18 the subject of the second and third omnibus objections.

19 THE COURT: Does any party wish to be heard in
20 connection with the debtor's request? All right, the matters
21 for which the Court has received a written response will be
22 continued to June 23. The two other claims will be
23 reclassified and all of the other claims will be disallowed.

24 MR. BLANKS: Thank you, Your Honor.

25 MR. FREDERICKS: Good afternoon, again, Your Honor.

1 Ian Fredericks of Skadden, Arps, Slate, Meagher & Flom on
2 behalf of the debtors. We'll, I believe, go back in the agenda
3 to item number 20 which is the debtor's motion to sell real
4 property located in Ardmore, Oklahoma.

5 When the motion was originally filed there was a
6 stalking horse agreement with Shore's Oil Field Equipment.
7 That agreement contemplated a \$6 million purchase price. The
8 procedures set forth in the motion acquired any competing bids
9 by May 6th with the first minimum overbid being 625 or -- I'm
10 sorry, \$6,250,000. You had to submit a deposit equal to ten
11 percent which was \$625,000. Prior to the bid deadline the
12 debtors received one additional bid. That was a bid from
13 General Mills and it complied with the bid procedures including
14 that the deposit was made.

15 As a result, on May 11th the debtors held an auction
16 with respect to the real property. Both General Mills and
17 Shore's Oil Field Equipment participated. During the auction
18 there was a brief break to accommodate a request by Shore's to
19 visit the property because certain equipment located in the
20 distribution center had not been removed as it was supposed to.
21 The debtors have sold that equipment in the distribution center
22 pursuant to prior motions to sell FF&E and certain buyers of
23 that equipment hadn't come and picked it up to date. And one
24 piece of equipment that the debtors had originally sold, a
25 buyer had decided not to take and so the debtors were going to

1 abandon it under the agreement upon the closing.

2 So Shore's, to take into consideration on what it was
3 going to bid, wanted to visit the site to take a look at it.
4 We accommodated that request, took a break. There was one
5 other piece of information that came up during the process. We
6 were speaking with the debtor's representative at the
7 distribution center and learned that the day before there was a
8 lightning strike very close to the distribution center that
9 activated the fire suppression system. Thankfully, the
10 suppression system didn't entirely turn on so that water
11 flooded the building. Rather the motor started and may have
12 burned out. That is one item that will be addressed. So the
13 suppression system may be broken in the sense that a motor that
14 operates the pumps may need to be replaced before the closing.

15 Under the agreement there is a casualty section where
16 if certain things happened who would bear the risk of loss,
17 what amounts and what the parties' rights were. The parties
18 have all agreed that that provision will govern the parties'
19 rights. For the Court's information it has a -- part of the
20 rights are that for any damage that occurred prior to closing
21 that resulted in loss of up to \$600,000, the debtors would
22 either need to, you know, repair that or I believe have a
23 purchase price adjustment for the cost. Where we've been told
24 that preliminarily if the damage is limited to the motor we are
25 talking about approximately \$15,000.

1 That's just to kind of give the Court all the
2 information that the bidders had. During the auction there was
3 competitive bidding. The bidding started at \$6.25 million
4 which was the purchase price in the General Mills agreement.
5 At the conclusion of the auction the highest or otherwise best
6 bid was that presented by Shore's Oil Field in the amount of
7 \$8.2 million. The next highest or otherwise bid was in the
8 amount of \$8.1 million by General Mills.

9 We did have a court reporter present at the auction,
10 Your Honor -- excuse me -- and I have a transcript of those
11 proceedings. These have been marked as Debtor's Exhibit 2.
12 I'd like to introduce those into evidence.

13 THE COURT: You may.

14 MR. FREDERICKS: Thank you. With that, Your Honor,
15 both Mr. Markham and the acting president and chief executive
16 officer, as well as Michele Mozier who is the principal
17 financial officer and controller and vice president, are both
18 in the courtroom. They would testify to the factual findings
19 in the order. With that, Your Honor, unless Your Honor would
20 like me to proffer their testimony or have them take the stand,
21 we would request that the Court approve the relief requested in
22 the motion.

23 THE COURT: Does any party wish to be heard in
24 connection with the debtor's motion authorizing the sale of the
25 real property in Ardmore, Oklahoma? All right. There being no

1 objection, the Court will accept your statements and the Court
2 will approve the sale and grant your motion.

3 MR. FREDERICKS: Thank you, Your Honor. I believe
4 that brings us to matter number 25 which is the debtor's motion
5 to assume, assign and sell the lease associated with store
6 number 232 located in San Mateo, California.

7 By way of background, Your Honor, as you may recall
8 this was originally part of the overall lease procedures
9 motion. Originally the debtors had received two bids. One bid
10 from the landlord and one bid from the subtenant. No other
11 bids were received. Based on those two -- because the location
12 was cash flow positive to the estate, the debtors determined to
13 reject both of those bids, pull the San Mateo lease from the
14 auction, and proceed to continue to market the location.

15 Furthermore, in -- before the end of March which
16 would have been the automatic rejection date of that lease, the
17 debtors modified the lease procedures order to carve those
18 leases out of that provision and thus make them subject to
19 ultimately the 210 day, 365(b)(4) deadline.

20 Following that, the debtors continued to market the
21 location and ultimately received three bids, none of which were
22 acceptable to the debtors at the time they were submitted.
23 They negotiated with the parties and arrived at what we'll call
24 the stalking horse agreement with Merchant Equity that
25 provided, I believe, for a \$235,000 purchase price. It

1 contemplated a breakup fee of \$25,000 and a minimum overbid, I
2 believe, of \$10,000.

3 The debtors filed the motion to approve that
4 transaction subject to higher or otherwise better bids. Prior
5 to the bid deadline the debtors received four additional bids.
6 Two of them were from the same third parties the debtors had
7 been negotiating with before the motion was filed. One was
8 from the landlord, and one was from the subtenant.

9 The debtors reviewed those bids and determined that
10 the subtenant's bid had certain conditions in it. As a result,
11 the debtors determined that was not a qualified bid and did not
12 allow the subtenant to participate in the auction. The
13 landlord's bid was a credit bid in the amount of -- the
14 landlord asserted the credit bid in the amount of
15 approximately, \$445,000.

16 The debtors, at the outset of the auction after
17 consultation with the creditors committee, determined that the
18 value of that bid was more appropriately what the debtors had
19 put in the motion as the proposed cure amount of \$40,000,
20 approximately \$40,000. As a result, the landlord clarified its
21 bid on the record that its bid was \$445,000 in either cash or
22 cure amount or some combination thereof after the Court
23 ultimately determined what the appropriate cure amount would
24 be.

25 With that, the debtors commenced the auction after a

1 consultation with the committee with the landlord's bid as the
2 highest or otherwise best bid. The next closest bid, I
3 believe, was \$280,000. There was no other bidding at the
4 auction. With that, the debtors determined that bid was the
5 highest and best bid and closed the auction.

6 I do have here, Your Honor, marked as Debtor's
7 Exhibit 3 a transcript of those proceedings which I would like
8 to introduce into evidence.

9 THE COURT: Thank you. So received.

10 MR. FREDERICKS: Thank you, Your Honor. Following
11 the auction the debtors negotiated with the landlord over what
12 -- to try to consensually resolve the cure amount and I'm happy
13 to report that as of today the debtors and the landlord have
14 consensually resolved what the cure amount would be. The cure
15 amount is the difference between the landlord's bid and
16 \$300,000. So in other words the landlord has agreed to pay the
17 estate \$300,000 in cash and the remainder of its bid -- the
18 remainder of its cure claim is a credit bid and, thus, the
19 estate will no longer have those claims.

20 We are currently memorializing that in a form of
21 order and assumption and assignment agreement. We received
22 some comments from the subtenant and the parties are still
23 working through changes to the order. We anticipate submitting
24 the order tomorrow to the Court.

25 With that, again, Mr. Markham and Ms. Mozier are both

1 present in the courtroom, they would testify to the findings of
2 fact in the order and the debtors thereby request that this
3 Court approve the sale to the landlord, the sale of both the
4 lease, the overlease with the landlord, and the sublease with
5 TJMaxx, the assumption, assignment and sale of those leases to
6 the landlord.

7 THE COURT: Does any party wish to be heard in
8 connection with the debtor's motion? Mr. Gray.

9 MR. GRAY: Good afternoon, Your Honor. William Gray
10 with Sands, Anderson, Marks & Miller on behalf of TJMaxx, the
11 subtenant here. What Mr. Fredericks has represented is my
12 understanding and we are working on the order. My client's
13 main interest in the order, probably two -- three interests.

14 First, as these orders normally have, there is a free
15 and clear of interest in the assignment, et cetera. We just
16 want to make sure that our possessory rights are not free and
17 clear, that the order will reflect that Concor is taking the
18 obligations of our lease along and not -- that the possessory
19 interests are not being stripped from that.

20 Second, there is the year end reconciliations
21 currently that will come due at the end of this year. That
22 will be between Concor and my client as far as who we might owe
23 or who might owe us back. And lastly, since my client was
24 involved in the bidding there should just be a phrase about
25 there's no -- that we will get our bid back from -- as an

1 unsuccessful bidder -- deposit, excuse me, the deposit back for
2 the bid. With that, I think we've got an agreement.

3 THE COURT: All right. Thank you, Mr. Gray. Mr.
4 Mueller.

5 MR. MUELLER: Good afternoon, Your Honor. Michael
6 Mueller on behalf of Concor Enterprises, Inc., the landlord and
7 the proposed assignee. As a result of the auction, I can
8 confirm both Mr. Fredericks' and Mr. Gray's comments to the
9 Court. We are working on a proposed agreed order and the
10 language of the assignment agreement. We hope to submit that
11 to the Court tomorrow.

12 Under the proposed order, the effective bid, I
13 believe, we have agreed is going to be today. There are some
14 other reconciliations, but essentially with respect to payments
15 from the subtenant for sublease payments and with respect to
16 the debtor's overpayment of rent through May 15th, we owe them
17 a couple of days rent back from May 13th to May 15th.

18 We also can confirm that we obviously will recognize
19 TJMaxx's subtenant rights or possessory rights and we will
20 conform to the lease agreement with respect -- the sublease
21 agreement, with respect to the reconciliation at year end.
22 Thank you, Your Honor.

23 THE COURT: All right. Thank you. Any other party
24 wish to be heard in connection with the debtor's motion?

25 MR. FREDERICKS: There is one additional thing, Your

1 Honor, and I apologize for not mentioning this sooner. That he
2 is correct there will be some reconciliations regarding
3 prorated rent payments. The other thing is, as far as the
4 settlement goes with the landlord over the cure amount, we did
5 consult with the committee and the committee did agree with
6 that settlement.

7 THE COURT: All right. I assume you had no problem
8 with the statements of either Mr. Gray or Mr. Mueller.

9 MR. FREDERICKS: No. I concur with their statements.

10 THE COURT: Okay, very good. The Court then will
11 approve the motion and ask you to submit an order as has been
12 described to the Court.

13 MR. FREDERICKS: Thank you very much, Your Honor.

14 THE COURT: All right. Are there any other matters
15 that we need to take up then this afternoon in connection with
16 Circuit City?

17 MR. FREDERICKS: I do not believe so. Unless Your
18 Honor has any questions about case status or things like that,
19 I'd be happy to answer them.

20 THE COURT: Thank you very much. The Court is
21 satisfied with the progress of this case.

22 MR. FREDERICKS: Thank you, Your Honor.

23 THE CLERK: Court is now adjourned.

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C E R T I F I C A T I O N

I, LYNN SCHMITZ, court approved transcriber,
certify that the foregoing is a correct transcript from
the official electronic sound recording of the proceedings
in the above-entitled matter.

/s/ Lynn Schmitz Date: May 27, 2009

LYNN SCHMITZ
J&J COURT TRANSCRIBERS, INC.